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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------|------------------|
| 09/901,155 | 07/10/2001 | John E. Schommer | | 7088 |
| 7590 | 02/04/2004 | | EXAMINER | |
| George T. Parsons 2736 Aegean Drive San Diego, CA 92139-3211 | | | KIM, CHRISTOPHER S | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3752 | |
| | | | DATE MAILED: 02/04/2004 | 7 |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/901,155 | SCHOMMER, JOHN E. | |
| | Examiner | Art Unit | |
| | Christopher S. Kim | 3752 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 12 November 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,2,4-7,9-11,16 and 22-24 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,2,4-7,9-11,16 and 22-24 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

| | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Amendment filed November 12, 2003 is acknowledged.
2. Letter filed November 13, 2003 is acknowledged.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. The affidavit under 37 CFR 1.132 filed November 12, 2003 is insufficient to overcome the rejection of claims 1, 2, 4-7, 9-11, 16 and 22-24 based upon new matter under 35 U.S.C. 112, first paragraph; Russell et al. (4,009,666) and Newman (Des. 250,826) under 35 U.S.C. 102(b); and Newman (Des. 250,826), Nelson (4,730,786), Geel (2,692,163) and Lumpkin (2,746,072) under 35 U.S.C. 103 as set forth below. Affidavit under 37 CFR 1.132 cannot overcome a rejection based on prior art which anticipates applicant's claimed invention. The affidavit provides not probative value of objective evidence to overcome the rejections of obviousness. The affidavit appears to be no more than endorsements of the claimed invention. Finally, the affidavit provides no evidence that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Drawings

5. The drawings were received on November 12, 2003. These drawings are acceptable.

Specification

6. The amendment filed November 12, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: addition of the term "extruded".

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

7. Claims 2, 4, 5, 6, 10, 11, 16, 22, 23 and 24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It appears that applicant is using the term "extruded" to define a process of manufacturing which produces the forward wing and the rear wing in claims 2, 4, 5, 9 and 24. The application, as originally filed, disclosed does not appear to disclose an extruding manufacturing process.

8. Claims 2, 4, 5, 6 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "proximate to" in claims 2, 9 and 24 is a relative term which renders the claim indefinite. The term "proximate to" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is uncertain what distance between the hand grip and the distal end of the handle is being defined.

Claim 6, the recites "minimum of two to three gallons per minute" and "maximum water pressure from 40-80 pounds per square inch." It is uncertain how a range of values defines a "minimum" and a "maximum" value.

Throughout claims 5 and 9-24, it is uncertain whether the recitations following "preferred" or "preferably" is a positively recited limitation or a range within a range.

Claim Rejections - 35 USC § 102

9. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Russell et al. (4,009,666).

Russell et al. discloses a water conserving and cleaning apparatus comprising: a means 12 for holding said apparatus; a means 24 for removing particles; a means 28, 34 for directing air flow and creating a Venturi effect (inherently created by the low pressure created by the fluid exiting the nozzle; fluid and air are directed to and through aperture 36 in the form of a spray).

10. Claims 2, 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Newman (Des. 250,826).

Newman discloses, in the figures, a water conserving and cleaning apparatus comprising: an essentially straight handle; a hand grip; a straight fixture; a water flow control lever; a jet manifold; a forward wing; and a rear wing. The sloping rear wing has an infinite level and is cantileveled.

Claim Rejections - 35 USC § 103

11. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newman (Des. 250,826) in view of Nelson (4,730,786).

Newman discloses the limitations of the claimed invention with the exception of the cone-shaped water filter. Nelson discloses a cone-shaped water filter 66. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the cone-shaped water filter of Nelson to the device of Newman to filter the fluid.

12. Claims 1 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geel (2,692,163) in view of Lumpkin (2,746,072) and Nelson (4,730,786).

Geel discloses a water conserving and cleaning apparatus comprising: an essentially straight handle 10; a hand grip 11; a straight fixture 12; a water flow control lever (lever of 12); a jet manifold 15,16; a forward wing 31.

Geel discloses the limitations of the claimed invention with the exception of the rear wing and the rear wing having a plurality of wheels. Lumpkin discloses rear wing 4,6 and wheels 5. It would have been obvious to a person having ordinary skill in the

art at the time of the invention to have provided the rear wing and wheels of Lumpkin to the device of Geel to provide a squeegee.

Geel discloses the limitations of the claimed invention with the exception of the cone-shaped water filter. Nelson discloses a cone-shaped water filter 66. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the cone-shaped water filter of Nelson to the device of Geel to filter the fluid.

Response to Arguments

13. Applicant's arguments filed November 12, 2003 have been fully considered but they are not persuasive.

In response to applicant's argument that applicant's invention is a "water conserving and cleaning apparatus," the preamble "water conserving and cleaning" does not breath life and meaning to the claimed invention. It has been considered to merely recite a name of the device. Additionally, the recitation "thereby providing a water saving and a highly effective cleaning feature" has been considered to define breath rather than indefiniteness for use of relative terms. The functional recitation only requires the ability to so perform. The device of Russell et al. is "water saving" relative to a device which uses more water than the device of Russell et al. Finally, since "cleaning" is not defined, any movement of particles (at the target surface) resulting from the use of Russell et al. is considered to provide "highly effective cleaning" compared to a device which produces no movement of particles.

In response to applicant's argument that claim 1 has been amended to insert "... an optimum air flow and...", no such recitation is found in claim 1.

In response to applicant's argument that claim 1 requires a means for creating a Venturi effect, such effect is inherent in Russell et al.

In response to applicant's argument that Russell et al. uses a compressor for highly pressurized fluid, applicant's argument is not commensurate in scope with the claimed invention.

In response to applicant's arguments directed to Lumpkin and Nelson, applicant's arguments are not commensurate in scope with the claimed invention.

14. Remainder of applicant's arguments with respect to claims 2, 4-7, 9-11 and 16 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (703) 308-8336. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (703) 308-2087. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Christopher S. Kim
Primary Examiner
Art Unit 3752

CK
February 3, 2004